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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

PERU*

[22 February 1994]

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Introduction

1. The Government of Peru transmitted its initial report to the Committee against Torture together with a note to the Committee from Mr. Julio Fernando Mazuelos Cuello, Chairman of the Multisectoral Working Group responsible for preparing the report. The note reads as follows:

> "The Multisectoral Working Group established by Supreme Decision No. 454-93-JUS and entrusted with the task of preparing and defending the report of the Government of Peru on the new legal order in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submits herewith the report of Peru to the United Nations Committee against Torture.
>
> "The Working Group was comprised of Mr. Julio Fernando Mazuelos Cuello, representative of the Ministry of Justice and Chairman of the Group; Mr. David Málaga Ego-Aguirre, representative of the Ministry of Foreign Affairs; Mr. Pablo Sánchez Velarde, representative of the Office of the Public Prosecutor; Mr. Mariano García Godos, Ambassador, representative of the Ministry of the Interior; and Major Manuel Ubillus Tolentino of the Peruvian Army.
>
> "With this document Peru reaffirms its political will to make a genuine contribution to the international community's struggle to eliminate torture and other cruel, inhuman or degrading treatment or punishment, as stipulated in the Convention; this political will is amply reflected in the new 1993 Political Constitution of the State
>
> "In the preparation of this report, the Manual on Human Rights Reporting was taken as a guide. [...]
>
> "The country's efforts to meet the standards set forth in the Convention take a comprehensive approach and include participation by the sectors concerned with the problem of torture. As part of this approach, the Working Group thought it advisable to ask non-governmental organizations for their views on the implementation of the Convention in our country. For that purpose it has called upon the services of Reverend Father Hubert Lanssiers, the official representative of the Government of Peru for the dialogue with the National Coordinator of Human Rights.
>
> "The Working Group has also suggested that the governmental authorities should establish a multisectoral working group to prepare a special act for the punishment of the offence of torture. Similarly, the sectors involved have been informed of charges of acts of torture made by NGOs, through the above-mentioned official representative, so that the appropriate investigations may be conducted.
>
> "Finally, the Multisectoral Working Group wishes to express its gratitude to Mr. César San Martín Castro for his unstinting advice in the preparation of the final text of this report."

I. GENERAL INFORMATION ON THE LEGISLATION AGAINST TORTURE

2. Torture is explicitly prohibited under the Peruvian legal system. Article 2 (1) of the Constitution recognizes the right to physical and moral integrity of the person; article 2 (24) (h) specifies that no one may be the victim of moral, psychological or physical violence or subjected to inhuman or humiliating treatment. Anyone may request an immediate medical examination of such a victim. Statements obtained by violence are null and void; persons using violence are criminally liable. The Code of Criminal Procedure also states that evidence obtained in violation of the Constitution and legislation is null and void (art. 195), and the Penal Code lays down punishment for acts that impair the physical and psychological integrity of the person and for acts committed in abuse of an official position.

3. Peru is a party to numerous international instruments for the protection of human rights. The Constitution in no way qualifies this commitment, and indeed states that one of the duties of the State is the promotion and defence of human rights. It should be noted that Peru is a party to the American Convention on Human Rights and that on the basis of that regional instrument and its participation in the Organization of American States it has also signed the Inter-American Convention to Prevent and Punish Torture.

4. The provisions of the Convention, like those of any international instrument, are part of the national legislation, inasmuch as they have been approved and ratified by the President of the Republic. Accordingly, they may be invoked before the judiciary, the Office of the Public Prosecutor, the Ombudsman and the other branches of the Executive.

5. The remedies available as regards torture are criminal proceedings and the disciplinary and investigatory systems of the Ministries of the Interior and Defence.

6. The Office of the Public Prosecutor is responsible for criminal proceedings and may be approached by an injured party or anyone who has knowledge of the commission of any of the acts covered in article 1 of the Convention. Article 103 of the Code of Penal Procedure stipulates that non-governmental organizations whose purpose is to defend human rights have the legal capacity to lodge complaints and participate in proceedings relating to the above-mentioned cases.

7. The judiciary, for its part, is responsible for trying and judging these offences. The military courts take over the case when the offender is a member of the military or police, provided that the injured party is a member of the armed forces and that the acts in question may be classified as abuse of authority. In cases of conflict of jurisdiction, the Supreme Court of Justice makes the final decision.

8. Under the system of administrative discipline, members of the military who commit offences that affect military honour, decorum and/or duties, are required to appear before an investigatory council, which after an investigation procedure may impose punishments of varying degrees of severity, including permanent dismissal from the armed forces. Even when the offence

does not involve abuse of military authority, the acts committed lead to an administrative procedure involving a disciplinary penalty, independently of the judicial proceedings.

9. With respect to the Peruvian National Police, the Code of Professional Ethics, adopted by Supreme Decision No. 0140-89-IN/DM of 30 June 1989, stipulates that the police must deal with all persons, including offenders against the law, with due diligence and consideration, with care and without violence. To that end it establishes a court of honour, which is a temporary court of an honorary nature responsible for hearing cases involving violations of the Code submitted to it, to the extent that the acts in question do not represent a disciplinary offence.

10. The regulations of the disciplinary system of the Peruvian National Police, adopted by Supreme Decree No. 0026-89-IN of 1 September 1989, stipulate that ill-treatment of detainees by word or deed is an abuse of authority, whether committed in the performance of official duties or not. According to the seriousness of the offence, penalties range from verbal warning to retirement as a disciplinary measure, independently of the corresponding criminal and civil liability. The penalties are imposed by the various authorities of the National Police and may be submitted to arbitration by the immediate hierarchical superior and by the investigatory council.

11. Article 49 of the Police Force Organization Act (Decree-Law No. 371) states that offences committed by members of the police in the performance of or in connection with their duties shall be investigated by their respective commands and reported to the corresponding court, civil or military, as appropriate. The investigatory councils are responsible for investigating offences committed by members of the police, in order to determine the administrative responsibility involved.

12. The Act relating to the Professional Status of Members of the Peruvian National Police (Decree-Law No. 745) established the Office for the Supervision of Ethical and Disciplinary Matters, to which the investigatory councils report.

13. Although the legislation is very broad as regards the punishment of torture, since the Office of the Public Prosecutor is obliged and empowered, with no limitations whatsoever, to receive any kind of complaint relating to torture, as are the special courts and administrative bodies of the Ministries of Defence and the Interior and the armed forces and the National Police, for budgetary reasons there have been no rehabilitation programmes to date for the victims of torture or for the victims of other offences such as rape or abduction.

14. Peruvian legislation prohibits torture and classifies acts relating to torture as crimes. It must be acknowledged, however, that torture has not been completely eliminated, since despite the desire at the highest levels of government to put an end to it, agents of the State still resort to this practice. The factors influencing the continuing occurrence of torture in the country have to do with Peruvian culture, the state of subversive violence the country is experiencing and shortcomings in the application of the law as it relates to the prevention and punishment of torture. As everyone is aware,

the European legal system at one point in its history accepted torture and confessions obtained under torture as a legitimate instrument for the establishment of the truth and the application of the law. Peru, as an heir to that tradition, also made use of such practices, which did not immediately cease to exist when subsequently banned from the legal system. Without any doubt the weakness of Peruvian institutions and the lack of an educational and training programme, especially for law-enforcement officials, were responsible for the fact that social practice did not completely take on the new values of a system that respected the principle of the dignity of the individual. Furthermore, the violence unleashed by terrorists, whose victims included members of the armed forces and police force, made it extremely difficult to control the behaviour of military and police personnel. The size of the national territory and the lack of infrastructure for the legal monitoring agencies (Office of the Public Prosecutor and the judiciary) and for the investigatory organs of the armed forces and the National Police themselves make it difficult to implement a programme of activities for eliminating the practice of torture and, where necessary, punishing those responsible in such a way as to make examples of them. Despite this, the above-mentioned bodies and agencies are carrying out their work in defence of human rights to the extent possible. This is combined with an aggressive policy regarding training and raising awareness of individual rights and the publication of internal documents on the way in which the police and military should proceed when dealing with a person involved in the commission of an offence.

15. The Working Group responsible for preparing Peru's report on the Convention against Torture thought it desirable to seek the views and comments of civilian society on the implementation of the Convention in the country. To that end, it was agreed to maintain a dialogue with the National Coordinating Body for Human Rights, Reverend Father Hubert Lanssiers acting for the Working Group as the government representative for the dialogue.

16. The Asociación Pro Derechos Humanos (APRODEH) recognized that the counter-subversive strategy had had obvious success. It had been possible to break up the national leadership of the Sendero Luminoso Communist Party by arresting its head, Abimael Guzmán. As regards the practice of torture, on the other hand, it argued that more needed to be done to implement the Convention against Torture in the country, as there was a range of difficulties involved in monitoring human rights violations that might be committed by members of the armed forces and the National Police against persons in detention.

17. The National Coordinating Body for Human Rights stated that in its view the Peruvian State was not meeting expectations in the protection of human rights, despite the progress achieved; it nevertheless acknowledged that there had been some improvement in the country in that respect.

18. The National Coordinating Body also emphasized that one of the problems still affecting the situation in Peru was the question of impunity for acts of torture. However, it acknowledged the progress made by the Peruvian Government towards eliminating this practice, and especially, towards punishing those responsible.

19. The Working Group also received from Reverend Father Hubert Lanssiers complaints of alleged human rights violations, especially cases of torture, which were brought to the notice of the authorities concerned in order that the appropriate investigatory measures might be taken.

II. INFORMATION CONCERNING EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 2

20. The national legal system sanctions legislative measures to prevent acts of torture. The new Constitution, in its provisions on the fundamental rights of the human person, stipulates in article 2 (1) that everyone has the right to life, an identity, moral, psychological and physical integrity and free development and wellbeing; thus it may generally be stated that the human person is the subject of fundamental rights intended to protect him within the social system.

21. Regarding guarantees of personal freedom and security, and in direct reference to the elimination of acts of torture by the monitoring agencies, article 2 (24) (h) of the new Constitution stipulates: "No one shall be subjected to moral, psychological or physical violence, or to torture or to inhuman or humiliating treatment or punishment. Anyone may request an immediate medical examination of an injured person or a person unable to appeal to an authority themselves. Statements obtained through violence shall be null and void. Anyone who uses violence shall be held liable."

22. Regarding the prohibition of the practice of torture, it should be noted that the above-mentioned text from the 1993 Constitution represents progress over the 1979 Constitution and provides more guarantees than the old article 234, since it explicitly includes the protection of people who are not in a position to deal directly with an authority, allowing the complaint of torture to be delegated to another person; it also explicitly invalidates statements obtained through violence, thus combating unlawfulness brought about by acts of torture against detainees or prisoners and above all ensuring that statements so obtained cannot be used against them. In addition, there is an explicit provision to the effect that any official who practises torture in the performance of his duties shall be criminally liable.

23. Peruvian prison legislation also contains a prohibition of torture, inasmuch as the Code of Execution of Punishments, Legislative Decree No. 654, lays down in article III of the Preliminary Title that the execution of a penalty and the imprisonment of defendants shall not be accompanied by torture or inhuman or degrading treatment or any other act or procedure which impairs the dignity of the prisoner. Thus the objectives of re-educating and socially rehabilitating a prisoner must be achieved with due respect for his physical, moral and psychological integrity and for the fundamental rights of a person deprived of liberty. If any violation of the provisions laid down for the benefit of prisoners occurs, it is open to the prisoner to complain to the prison governor, under article 14 of the Code of Execution of Punishments, and, if necessary, he may have recourse to the Office of the Public Prosecutor in order to lodge his complaint.

24. Article 4 of Decree-Law No. 26102, the Code on Children and Adolescents, stipulates that every child or adolescent is entitled to have his personal integrity respected. He may not be subjected to torture or to cruel or degrading treatment. Forced labour, economic exploitation, child prostitution and the sale or traffic of children and adolescents are considered to be slavery-like practices. The foregoing meets one of the requirements of article 2 of the Convention, i.e. that the State party shall take legislative measures to prevent acts of torture in any territory under its jurisdiction (Convention, art. 2 (1)).

25. Since the prohibition of torture has been given constitutional status, this practice is absolutely prohibited and there is no possibility of invoking an emergency situation or exceptional circumstances such as a state of war or threat of war, internal political instability or any other type of emergency as a justification of torture. This meets one of the objectives of article 2 of the Convention, i.e. that no exceptional measures may be invoked as a justification of torture (Convention, art. 2).

26. There is also no possibility under Peruvian legislation for any situation or circumstance to be used to legitimize torture in our legal system on the grounds of obedience to orders from a superior. This applies with regard to the grounds for justification laid down in the criminal legislation, and specifically the due obedience provision contained in article 20, paragraph 9, of the Penal Code. That ground for justification states that anyone acting in accordance with a compulsory order issued by a competent authority in the exercise of his functions is exempt from liability, but under the Peruvian legal system only orders that are in conformity with the law require "due obedience". Therefore, there is no possibility that an order to practise acts of torture or inflict injuries on a person may give protection on the ground of due obedience, since the practice of torture is prohibited under the Constitution (Constitution, art. 2 (24) (h)) and is therefore against the law; furthermore, the criminal legislation lays down punishment for the offence of injury in article 121 of the Criminal Code. Such orders would therefore be unlawful and ultra vires for a public authority.

27. In this way the national legislation meets another of the objectives laid down in article 2 (3) of the Convention, since an order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

28. Although it is true that internal law does not expressly provide for the inadmissibility of the expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, generally speaking any possibility that this might occur is avoided, because people are only handed over to the country pursuing them in the following exceptional cases.

29. Article 36 of the new Constitution recognizes the institution of political asylum and accepts the classification of refugee given by the Government granting asylum; it is therefore possible to avail oneself of that

institution in Peru. In addition, if a political refugee is expelled from the country, he is not handed over to the country whose Government is pursuing him.

30. The legislation on extradition provides sufficient guarantees, as both article 37 (2) of the Political Constitution and article 7 of Act No. 24710 prohibit the extradition of a person if it is considered to have been requested in order to persecute or punish him on grounds of religion, nationality, opinion or race. Article 37 (3) of the Constitution prohibits the extradition of persons being prosecuted for political offences or related acts.

31. Under the Peruvian legal system, passive extradition is not warranted if the offence is purely military, anti-religious, political, or press- or opinion-related. The fact that the victim of the punishable act in question has political duties, does not in itself justify the description of the offence as political; nor does the fact that the perpetrator has political duties make the act political (Act No. 24710, art. 6 (6)).

32. In cases of passive extradition our legislation (Act No. 24710, art. 23) provides for a series of guarantees to be met by the applicant State before the person is handed over: political, military or religious reasons cannot be used to aggravate the penalty; the time that has elapsed between the imprisonment of the person being extradited and the extradition decision shall count in his favour; the person shall not be handed over to a third State requesting him; the death penalty shall not be applied; and the person extradited shall not be detained in prison or tried for any crime other than the one for which the extradition was requested. Similarly, extradition in the national law is a procedure exceptionally recognized on a reciprocal basis within a context of respect for human rights and with the guarantees mentioned above.

33. Regarding active extradition, the recently-enacted Supreme Decree No. 044-93-JUS contains rules governing the behaviour of the judiciary and the Government. The following are worthy of mention:

(a) An application for the active extradition of a person may be filed by the Office of the Public Prosecutor or the plaintiff or claimant for criminal indemnification with the court hearing the criminal proceedings. The criminal judge or higher criminal division of the court will decide whether or not the application is admissible;

(b) After the relevant legal proceedings, the extradition file is referred to the Criminal Division of the Supreme Court of the Republic, which immediately refers it to the Senior Government Procurator for Criminal Matters for an illustrative opinion. Once the extradition file has been returned, the Criminal Division of the Supreme Court takes a decision on the application;

(c) Once the Criminal Division of the Supreme Court has granted the application, it is studied by a commission made up of two representatives of the Ministry of Justice and two representatives of the Ministry of Foreign Affairs, who submit a report to the Ministry of Justice; the Minister of

Justice will in turn present the application for active extradition to the Council of Ministers, and the Council of Ministers will ultimately decide whether the application is to be accepted or rejected;

(d) An extradition application accepted by the Government may be revoked at any time before the country of asylum has made a final decision on its merits, in so far as there may be an error relating to the rules of internal or extradition law or the evidence supporting the charge. The decision to revoke will be taken at the request of the Criminal Division of the Supreme Court of Justice or at the request of the Commission;

(e) As a means of contesting the application for extradition the subject of the procedure has the possibility of challenging the request in the courts.

34. When a Commission is established to study the extradition application, it will be able to determine whether or not the application is admissible by evaluating whether the person would be subject to political reprisals or would be in danger of being subjected to torture if extradited.

35. The foregoing indicates that the national legislation meets the objectives of article 3 of the Convention.

Article 4

36. As for the acceptance of the definition of torture in article 1 of the Convention under internal law, especially the criminal law, it should be noted that although there is an explicit acceptance of the definition in the Constitution in article 2 (24) (h), our substantive criminal legislation adopts the procedure of concurrence of offences to punish this practice. The concurrence formula combines the offence of injury laid down in article 121 of the Criminal Code with the offence of abuse of authority included in article 376 of the Code. The two provisions read as follows:

> "Article 121. Anyone who causes serious harm to the body or health of another shall be liable to deprivation of liberty for not less than three and not more than eight years.
>
> "The following are considered to be serious injury:
>
> 1. Injury placing the victim's life in immediate danger.
>
> 2. Injury mutilating a limb or important bodily organ or making it unfit to perform its function, or leaving a person unable to work, or suffering from a permanent psychological disability or disorder, or permanently and seriously disfigured.
>
> 3. Injury inflicting any other serious harm to the physical integrity or physical or mental health of a person requiring 30 or more days of care or rest on doctor's orders.

"When the victim dies as a result of the injury and the perpetrator could have foreseen this result, the sentence shall be not less than 5 and not more than 10 years".

"Article 376. Any public official who, abusing his authority, commits or orders the commission of any arbitrary act whatsoever against another shall be liable to deprivation of liberty for not more than two years".

37. The concurrence of offences formula established by the Penal Code for punishing acts defined as torture by article 1 of the Convention entails application of the sentence for the more serious offence, for example, in the case in question, the maximum penalty for the offence of injury (10 years). Furthermore in accordance with article 1 of Decree-Law No. 25662 of 7 August 1992, the maximum penalty is to be doubled, for a total of 20 years. Thus it will be seen that the penalty set for acts defined as torture by article 1 of the Convention is proportional to the serious harm they cause the victim and takes into account the impairment of juridical assets, such as the "physical or psychological integrity of the individual" and the "system of constitutional and legal guarantees for citizens in their dealings with the authorities".

38. As regards incomplete forms of torture or similar acts, especially attempts to commit it, the general section of the Penal Code contains the relevant rules for punishing them. Article 16 of the Penal Code specifies that attempted acts consist of "the perpetrator's beginning to carry out an offence which he has decided to commit, without completing it". Therefore, acts which imply a beginning of the conduct described in articles 121 and 376 of the Penal Code but which do not complete it are liable to criminal penalties. The sentences imposed, however, will be lower than those provided for the acts when completed, in so far as the attempted act results in a lesser loss of value, i.e. less of an impairment of the juridical assets in question. Our criminal legislation does not contain an exact and predetermined punishment for attempted offences; the Peruvian legislator has chosen a flexible approach, which leaves a reasonable reduction of the penalty to the judge's discretion.

39. With regard to punishing forms of complicity or participation in the acts specified in article 1 of the Convention, Peruvian legislation covers commission, instigation and complicity, in articles 23, 24 and 25 of the Penal Code respectively. It thus punishes both those who use others to commit the acts described in articles 121 and 376 of the Penal Code, through what is known as "indirect commission", and those who instigate the commission of such acts by another person or provide the help necessary for their commission.

40. As for an order to commit acts of torture given by a person in authority, article 376 of the Penal Code punishes not only a person who abuses his powers and commits an arbitrary act, but also a person who orders such an act; accordingly, in view of our concurrence of offences formula for punishing torture and in view of the fact that our legislation accepts the institution of indirect commission, an official who orders a person to be tortured, even if he is not the one inflicting the injury, is liable to criminal penalties.

An official who gives an order to torture a person is committing the offences of injury and abuse of authority covered in articles 121 and 376 of the Penal Code.

41. Finally, it should be pointed out that the Code of Military Justice contains specific provisions enabling military courts to punish the acts covered in article 1 of the Convention. Paragraphs 1 and 9 of article 180 respectively stipulate that imposing torture or penalties prohibited by law constitutes the offence of abuse of authority and that persons become guilty of that offence when, in the exercise of their duties or on the orders of a superior, they use or caused to be used against any person, with no legitimate reason, unnecessary violence in performing their tasks. In this way the military court system also provides for punishment of the acts described in article 1 of the Convention, there being no possible grounds for exonerating anyone acting on the orders of a superior.

42. Thus our system of criminal law meets the requirements of article 4 of the Convention.

Article 5

43. The scope of Peruvian jurisdiction is laid down in article 54 of the Political Constitution of 1993, which states that the State shall exercise sovereignty and jurisdiction both over its land territory and over its territorial waters and airspace.

44. On this basis, our legal system has adopted a series of principles delimiting the area of application of the criminal law, as follows:

(a) Principle of territoriality, article 1 of the Penal Code, according to which Peruvian criminal law shall apply to anyone committing a punishable act in the territory of the Republic, subject to the exceptions laid down in international law. Thus any of the acts set forth in article 1 of the Convention carries a criminal penalty in so far as it has been committed within the territory of Peru. This also applies to acts committed in public Peruvian vessels or aircraft, wherever they are located, or in private Peruvian vessels or aircraft on the high seas or in airspace over which no State exercises sovereignty;

(b) Principle of defence, article 2 of the Penal Code, according to which Peruvian criminal legislation applies to any offence committed abroad, inter alia:

(i) When the perpetrator is a public official or servant acting in the course of his duties;

(ii) When the offence is perpetrated against or by a Peruvian and is classified as extraditable under Peruvian criminal law, provided that it is also punishable in the State in which it was committed and the perpetrator enters the territory of the Republic in some way.

45. Therefore, the acts described in article 1 of the Convention may be prosecuted when the alleged offender or victim of the offence is a Peruvian national. However, Peruvian legislation does lay down some exceptions to the principle of defence, out of a concern to provide safeguards, when the offence is perpetrated against or by a Peruvian. These exceptions are contained in article 4 of the Penal Code, as follows: when criminal proceedings have been extinguished in accordance with one or the other body of legislation, in the case of political offences or related acts, and when the accused has been acquitted abroad or the convicted person has completed his sentence or when the sentence is time-barred or remitted. It can therefore be seen that our domestic legislation fully meets the objectives of article 5 (1) of the Convention.

46. In addition, article 3 of the Penal Code generally meets the requirement contained in article 5 (2) of the Convention, inasmuch as Peruvian criminal legislation is also applicable when extradition is requested but the perpetrator is not handed over to the competent authority of a foreign State. In this respect, anyone who carries out any of the acts described in article 1 of the Convention may be subject to the Peruvian system of justice.

47. As for article 5 (3) of the Convention, it should be noted that the Peruvian legal system recognizes ordinary courts, military courts and arbitral courts, as stipulated in article 139 (1) of the Political Constitution of the State. It thus embodies the principle of unity and exclusivity of the courts; there are no judicial proceedings by assignment or delegation of powers, nor is there any independent court.

48. The text of the Convention is applicable in both the ordinary and military courts, since our internal legislation makes no distinctions in that respect, and in addition, treaties in force concluded by the State become part of national law in accordance with article 55 of the new Constitution. Similarly, the Fourth Final Provision of the Constitution stipulates: "Rules relating to the rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on human rights ratified by Peru".

49. Similarly, the Code of Military Justice, the legal framework for military criminal jurisdiction, explicitly covers the acts described in article 1 of the Convention. Accordingly, internal law does not exclude any criminal jurisdiction from the application of the Convention, and in this way, virtually fulfils the requirement of article 5 (3) of the Convention.

Article 6

50. In accordance with article 6 of the Convention, Peruvian legislation on extradition provides for the person who is being extradited to be taken into custody. Article 20 of Act No. 24710, the Extradition Act, stipulates, "In emergency cases, the person being extradited may be taken into custody, upon a simple request made by any means, including telegraph, telephone or radio, on the basis of an arrest warrant, judicial decision or an escape attempt by the accused person, with an indication of the offence committed and agreement by the applicant State to submit a formal application within 30 days from the

date of receipt of the request". In this way, the possibility is provided, in general terms and for all offences, including those covered by article 1 of the Convention, of taking a person into custody in order to extradite him subsequently to the State that has requested him, in emergency cases and on the basis of a commitment to complete the appropriate procedure within a 30-day period.

51. As a safeguard, if the formal application for extradition has not been duly prepared and submitted within the above-mentioned period, the deprivation of liberty will not continue and the person whose extradition is sought will be unconditionally released, the applicant State being responsible for the person being taken into custody (Act No. 24710, arts. 21 and 28). Similarly, article 31 of the Act stipulates that once the person has been taken into custody by the local office of the International Criminal Police Organization - Interpol (ICPO-Interpol), a statement must be taken from him and he must be placed at the disposal of the criminal judge within 24 hours, whatever the nature of the charge. In any event a detainee is entitled in such circumstances to apply for the remedy of habeas corpus.

52. The authority responsible for applying the various aspects of article 6 of the Convention is the sitting criminal judge. The criminal judge shall take the person's statement with the assistance of a lawyer of his choice or a court-appointed lawyer, and the person being extradited may submit evidence on his own behalf to show that the application is inadmissible in form or substance or to prove his innocence or the existence of extenuating circumstances or grounds for exemption from criminal liability (Act No. 24710, art. 32). The criminal judge shall summon the person being extradited, his lawyer and a representative of the Office of the Public Prosecutor to a public hearing to be held within a period of no more than 15 days. He shall also summon the embassy of the applicant State to send a lawyer to represent it; both parties may submit evidence, arguments and information through their lawyers. Once the hearing has been completed, the criminal judge shall declare the extradition admissible or inadmissible within a period of three days. The Supreme Court of the Republic shall rule on whether or not the application is to be granted, and it is for the Government, in the final instance, to decide that the extradition shall take place (Act No. 24710, arts. 34, 35 and 36, and Political Constitution, art. 37).

53. With regard to the guarantees laid down in article 6 (3) of the Convention, article 2 (24) (g) of the Constitution of 1993 stipulates that no one may be held incommunicado except when that is essential for clearing up a case, and in the manner and for the period laid down by the law. Act No. 24710 does not empower any authority to hold detainees incommunicado as part of an extradition procedure; accordingly, there is no obstacle whatsoever to their contacting the representative of the State of which they are a national or the State in which they habitually reside.

54. From all the foregoing it can be seen that the Peruvian State effectively protects the rights and complies with the obligations set forth in article 6 of the Convention.

Article 7

55. Article 3 of the Peruvian Penal Code establishes the principle of representative justice, by which Peruvian criminal law is applied whenever an extradition requested by a foreign State is not admissible. Under this provision the Peruvian courts may try persons whose extradition has been refused, in which case they apply Peruvian criminal law. The purpose of this provision is to avert impunity by assuming the obligation to prosecute and punish persons who commit offences abroad.

56. Under article 8 of the Extradition Act, if Peru refuses an extradition, it may try the accused, in which case it will request the evidence against him from the applicant State. Both provisions apply to all offences, and thus encompass conduct classified by the Convention as torture, which in Peruvian legislation comes under a number of categories. Moreover, in such cases the Peruvian courts will confine themselves to applying Peruvian law without any form of discrimination or exception, in other words, they will deal with the offence in question as if it had been committed on Peruvian territory. Similarly, no exceptions whatsoever are made as regards the evidence or procedural requirements; consequently, the evidentiary and juridical assessment of the act, as well as the relevant procedural requirements, are governed by one and the same legal order.

57. In addition, the Constitution, the Code of Penal Procedure, the Organization Act of the Office of the Public Prosecutor and the Habeas Corpus and Amparo Act ensure due process of law and make provision to safeguard the rights of persons facing trial in general, who obviously include persons accused of acts classified as torture by the Convention.

58. The system of legal safeguards for persons facing trial includes as a primary institutional safeguard the appointment of an independent, objective and impartial judge who is required to explain his decisions and justify them by reference to the law. The accused is entitled to be given a public hearing, not to be convicted in his absence, not to have the criminal law applied by analogy, not to be deprived of the right to defend himself, to be informed of the grounds or reasons for his detention and to benefit from the most favourable legislation should there be a doubt or conflict between criminal laws.

59. The Office of the Public Prosecutor is required to ensure the independence of the courts and the proper administration of justice. The Organization Act of the Office of the Public Prosecutor requires it to monitor the activity of the police and the lawfulness of their investigations and to ensure that the accused appoints a defence counsel he can trust.

60. The fundamental principles of the Code of Penal Procedure are, in addition to those contained in the Constitution, the requirement that the judge should ensure equality before the law, free and expeditious criminal justice, the presumption of innocence, prohibition of double jeopardy, placing of the burden of proof on the Office of the Public Prosecutor and compensation for judicial errors and arbitrary detention.

61. In the light of the above, it may be asserted that Peruvian legislation is in conformity with the requirements of article 7 of the Convention.

Article 8

62. Article 37 of the Constitution stipulates that extradition is subject to the existence of the law, of treaties and of the principle of reciprocity. Article 2 of Act No. 24710 reiterates these principles, while under article 3 reciprocity depends on respect for human rights and is subject to the limitations laid down by articles 6 and 7. The general requirement for extradition to be admissible is that the offence, regardless of its nature, must carry a penalty of not less than one year's deprivation of liberty. Consequently, conduct which the Convention classifies as torture automatically constitutes an extraditable offence.

63. Peru has entered into multilateral extradition treaties at the inter-American level, as well as seven bilateral treaties. None of them make any exception restricting the extradition of persons guilty of acts classified by the Convention as torture. Since the Convention came into force, Peru has entered into no extradition treaties that conflict with the provisions of the Convention, nor has it requested the extradition of any person charged with acts classified by the Convention as torture or received any request for extradition on the same grounds.

Article 9

64. The question of mutual international judicial assistance is of the utmost importance, not just with regard to crimes involving torture, but with regard to crimes in general, whether they are covered by a convention or not; accordingly, Peru promotes the provision of such assistance by signing and ratifying the appropriate international instruments. Peru is in the process of signing four bilateral agreements on mutual judicial assistance, with Great Britain (covering the crime of drug trafficking), Italy, Chile and Poland. Discussions with the first three countries have reached an advanced stage, while a first draft agreement has been exchanged with Poland. In addition, negotiations are under way with the three countries just mentioned regarding the signing of treaties on the transfer of convicts. In addition, treaties on extradition are under discussion with Italy and Poland. Peru is in the process of acceding to the Inter-American Convention on Mutual Judicial Assistance. This agreement is binding upon all the member countries of OAS.

Article 10

65. Article 14 of the Constitution makes the teaching of the Constitution and of human rights mandatory throughout the educational process, both civilian and military. Teaching is provided at all levels in accordance with the principles of the Constitution.

66. The Ministry of Defence has adopted a range of instructions and directives to achieve this end, and in particular to prevent torture. They include the following:

(a) Legislative Decree No. 665, which authorizes procurators to enter police stations and military establishments to check the situation of detainees. Ministerial Decision No. 1302-DE/SG, dated 11 November 1991, stipulates that duty officers in military establishments are required to admit and attend to them directly, providing them with all the facilities they need to discharge their duties; it also requires the Military Political Command of the zone in question to order any further measures required;

(b) On 11 September 1991 the Chairman of the Armed Forces Joint Command authorized delegates of the International Committee of the Red Cross to visit all military installations engaged in counter-subversive operations in order to perform their humanitarian mission;

(c) Supreme Decree No. 064-91-DE/SG, dated 8 November 1991, approved Directive No. 023-MD/SGMD, entitled "Rules and procedures that must be observed in order to facilitate the conduct of operations in areas where a state of emergency has been declared, for the purpose of ensuring the observance and defence of human rights";

(d) A Presidential Directive on the observance of human rights, approved by the Council of Ministers on 9 September 1991, which sets out presidential policy with regard to national pacification on the basis of respect for human rights;

(e) Memorandum No. 2586-EMFA/DDHH of 13 September 1993, issued by the Chief of the General Staff of the Armed Forces to all counter-subversive fronts and security zones, reiterating the need for unqualified respect for human rights;

(f) Memorandum No. 3539-EMFA-DDHH of 2 December 1993, issued by the Chairman of the Armed Forces Joint Command, drawing attention to the provisions regarding the treatment and registration of detainees;

(g) Memorandum No. 0774-EMFFAA-DDHH of 16 March 1993, issued by the Chairman of the Armed Forces Joint Command, stipulating that the armed forces will not permit any violations of human rights and issuing instructions for such acts to be reported and/or punished;

(h) Memorandum No. 460-C-3/a.05.01 of 11 April 1991, issued by the Chief of the General Staff of the Army, ordering in compliance with Act No. 25211 of 16 May 1990 that all military training centres (colleges and units) should provide teaching on the Constitution, human rights and national defence;

(i) Directive No. 004-SGMD-M of March 1992, setting out provisions to standardize human rights training and education in armed forces institutions;

(j) Multiple memorandum No. 726-C-4/a.05.02 of 12 June 1991, issued by the Chief of the Army General Staff, whereby all military training centres received the human rights master curriculum to be followed at each level of education;

(k) Training and instruction note No. 002-C-2/a.05.01 of July 1991, containing provisions for reorganizing programmes to facilitate the provision of instruction in counter-subversive warfare and the observance of human rights;

(l) Directive No. 016-EMFFAA-DDHH of July 1993, setting out provisions regarding the planning, preparation and conduct of a short human rights course for military and police personnel;

(m) An offprint containing the human rights course taught throughout Peru to all the forces of law and order engaged in anti-terrorist operations;

(n) "Decálogo de las Fuerzas del Orden" (The Ten Commandments of the Forces of Law and Order) published by the Armed Forces Joint Command and issued to all military and police personnel engaged in anti-terrorist operations.

67. As part of its policy of disseminating the basic principles that will promote unqualified respect for human rights in the interests of national pacification and in accordance with the relevant directives, the Peruvian National Police has incorporated into the curricula of the various centres comprising the police education system a number of lectures and courses designed to provide comprehensive knowledge of human rights theory and practice, which is subsequently to be reflected in the police's operational activity. In addition, since 1991 the aim of the Ministry of the Interior in respect of human rights has been to step up action to foster the promotion and protection of human rights throughout Peru in the various departments under its authority.

68. In response to the Government's concern for human rights, a number of bodies have been organized within the Ministry of the Interior to constitute a system of human rights protection. This has made it possible to reduce the number of complaints of human rights violations. Among the measures adopted, the following are worthy of note:

(a) Ministerial Decision No. 0629-91-IN/GI of 31 July 1991, establishing human rights offices as integral departments of prefectures, sub-prefectures and governors' and deputy governors' offices;

(b) Ministerial Decision No. 0668-A-91-IN-DM of 15 August 1991, establishing the Committee for the Defence of Human Rights within the Ministry of the Interior;

(c) Legislative Decree No. 744 of 8 November 1991, whereby the structure of the Peruvian National Police, including the organizational structure of its general staff, was brought into line with the Directorate for National Pacification and Human Rights Protection;

(d) Ministerial Decision No. 0396-92-IN/DM of 20 April 1992, approving the organizational and functional regulations of the human rights system of the Ministry of the Interior;

(e) Vice-Ministerial Decision No. 008-92-IN-VM of 1 November 1992, approving the organizational and functional regulations of the National Commission for Human Rights of the Ministry of the Interior;

(f) Ministerial Decision No. 1068-92-IN-DM of 30 November 1992, approving Directive No. 001-92-IN-CNDDHH/SP, of 19 November 1992, on "Rules of procedure for dealing with complaints of alleged human rights violations";

(g) Directive No. 114-91-DGPNP/EGM-OA-3, which stipulates rules and procedures to be observed by officers of the Peruvian National Police in the performance of their duties, guaranteeing faithful compliance with constitutional and other provisions regarding unqualified respect for human rights;

(h) Directive No. 014-92-DGPNP/EGM-DIPANDH, which lays down rules and procedures for registering, handling and disseminating information relating to persons detained at premises of the Peruvian National Police;

(i) Directional Decision No. 3977-91-DGPNP/EMG of 8 August 1991, approving the human rights booklet intended for the personnel of the Peruvian National Police;

(j) A brochure entitled "¿Sabes qué es ser Policía?" ("Do you know what it means to be a policeman?"), produced by the Social Communication Office of the Ministry of the Interior, which emphasizes the qualities that any good policeman ought to have, and the Ten Commandments of the National Police, which emphasize respect for the dignity and freedoms of the individual;

(k) A human rights compendium edited by the Social Communication Office of the Ministry of the Interior and intended for the political authorities, which contains basic notions relating to human rights, together with the legislation which underpins the Constitution and protects the human person in accordance with the Universal Declaration of Human Rights;

(l) In 1993 the Office of the Public Prosecutor participated in a short human rights course organized by the Ministry of Defence, which was given to military and police personnel at the main headquarters of the military-political commands and military zones (13).

Article 11

69. Specific regulations relating to police questioning are contained in Directorial Decision No. 1694-AD-SG of 8 November 1988. The regulations, entitled "Manual of Operational Procedures for Criminal Investigations", provide in section 10, "Questioning and interview", a reminder of the constitutional provisions that prohibit violations of a person's integrity and declares statements obtained through force to be invalid. The regulations contain a particular recommendation that policemen should protect the physical integrity of detainees. The techniques recommended for efficient interrogation do not include torture.

70. The Act on the Status of the Personnel of the Peruvian National Police and the Disciplinary Regulations lay down internal guidelines to ensure that

the police do not exceed their authority by ill-treating detainees or suspects. In addition, the new Code of Penal Procedure stipulates that the Office of the Public Prosecutor is responsible for directing investigations into crimes and that consequently during their investigations the police are functionally subordinate to the Procurator and may only carry out investigations as provided for by article 106 of the Code. The police may only take statements from the alleged culprits or participants in the crime if the Procurator has failed to appear within 24 hours after the complaint was lodged, or if the persons in question are in serious danger (Code of Penal Procedure, art. 106, para. 12).

71. The Organization Act of the Office of the Public Prosecutor authorizes the provincial procurator to visit penal establishments and places of pre-trial detention in order to hear complaints and pleas from convicted prisoners and prisoners awaiting trial regarding their judicial situation and constitutional rights. He is required to make a record of his visit and submit it, together with the relevant report, to the senior government procurator, without prejudice to the adoption of any legal measures required in conformity with his role of defending legality and human rights (art. 95, para. 8).

72. Prison officials are not authorized to interrogate detainees. As has already been mentioned, the Code of Execution of Punishments prohibits any act that could be classified by the Convention as torture. If a prison official commits such acts, he will be brought before the ordinary courts, without prejudice to any disciplinary measures prescribed by the general legislation on the civil service, Decree Law No. 276, which in serious cases may require dismissal.

Article 12

73. In accordance with article 1 of the Convention and with what has already been said on article 4, the offence of torture is prosecutable either pursuant to a complaint from a private individual or by the Office of the Public Prosecutor acting ex officio. In accordance with Peruvian procedural provisions, a summary preliminary investigation is carried out by the Office of the Public Prosecutor, in whom the public right of action in criminal cases is vested. Accordingly, the provincial criminal procurator may initiate proceedings, if necessary with police assistance, order a forensic examination to ascertain the psychological or physical harm done to the victim, take statements from the parties concerned and from the suspects, and lay a charge before the criminal judge if the legal requirements are met: committal of an offence, identification of the perpetrator and the offences not being time-barred.

74. These provisions do not prevent the court from assuming jurisdiction over the matter at the stage of the preliminary investigation. Legislation to this end has been adopted in respect of the offences of terrorism, drug trafficking and spying. Article 109, paragraph 2, of the new Code of Penal Procedure stipulates that the criminal judge may "immediately order a medical examination of the detainee, within the required time-limit, provided it has not been ordered by the procurator, without prejudice to authorizing at any

time his examination by his own doctor. The detainee has the right to be examined at his own request, at the request of his lawyer or any of his relatives, by a forensic or private physician without any restriction by the police."

Article 13

75. As torture is an offence which is prosecutable ex officio, the victim, or any other person may lodge a complaint with the Office of the Public Prosecutor in which he specifies the facts and provides the minimum information required for a preliminary investigation to be carried out, if appropriate, or for a formal charge to be brought before the court, if the offence is confirmed and the perpetrator identified.

76. As has already been mentioned, the new 1993 Constitution, article 2, paragraph 24 (h), stipulates that any statements obtained by force are invalid and adds that anyone who employs violence for that purpose is liable to punishment. In addition, the Constitution allows "anyone to request an immediate medical examination of the victim or of a person unable to appeal to the authorities himself". Thus the law provides ample scope for investigating this type of criminal act.

77. The preliminary police procedure is the same as that described in the previous commentary and is based on the provisions of article 159, paragraph 4, of the Constitution and articles 1 and 9 of the Organization Act of the Office of the Public Prosecutor. To these may be added the provisions of article 105 of the new Code of Penal Procedure, under which "As soon as the police authorities are informed of the commission of a punishable act liable to prosecution through public right of criminal action, they shall inform the provincial procurator. The Office of the Public Prosecutor shall guarantee the right of the detainee to a defence and take any measures required to elucidate the facts promptly". In addition, article 91 of the Code of Penal Procedure determines the procedural aims of the judicial investigation: "The procedural phase of the investigation is intended to bring together the evidence necessary to enable the procurator to decide whether or not to file charges. Its purpose is to determine whether the conduct in question constitutes an offence, to ascertain the circumstances or motives for the act, the identity of its perpetrator or accessory and of the victim, and whether any injury was caused."

78. As regards the protection which must be provided for plaintiffs and witnesses, article 10 of the new Code of Penal Procedure stipulates that in all cases such protection is the responsibility of the specialized police: "The police, by means of specialized units, shall provide protection for witnesses and evidence, serve notice on victims, witnesses and experts, whose places of abode shall be kept secret if necessary ...".

Article 14

79. The right to fair compensation for victims of torture and of any other offence determined by Peruvian criminal law is regulated by the provisions of

articles 92 to 101 of the Penal Code. Accordingly, compensation may include the expenditure necessary to restore the victim's physical or mental health, or such compensation as is due to his relatives if he dies.

80. For further details regarding article 14 of the Convention, reference may be made to the information provided in the section on the remedies available to an individual to defend his fundamental rights and on systems of compensation and rehabilitation in the core document submitted by Peru.

Article 15

81. As has already been mentioned in previous paragraphs, statements obtained by use of violence are invalid, under article 2, paragraph 24 (h) of the Constitution. Accordingly, in regular proceedings the judicial authorities do not accept such statements in evidence. Moreover, if the use of violence to obtain them is ascertained, public right of criminal action will automatically be exercised against the authority responsible for the punishable conduct. It should also be stressed that in accordance with the new Code of Penal Procedure, the gathering of evidence is subject to the provisions of the Constitution and of the conventions and treaties adopted and ratified by Peru.

82. An attempt is thus made to establish the truth through the use of admissible evidence obtained by lawful means and brought forward at the trial in accordance with the law, as required by articles 190 to 195 of the Code of Penal Procedure.

Article 16

83. Any other violation of the physical or mental integrity of persons which does not constitute torture in accordance with article 1 of the Convention is dealt with under Peruvian law as an ordinary offence and is liable to a criminal penalty.

84. Peruvian legislation expects high moral standards of those in public office and in particular classifies as an aggravating circumstance - punishable by a severe penalty - the fact that the person committing an ordinary crime is a member or former member of the National Police. In this connection, article 1 of Decree Law No. 25662 stipulates that:

> "Any member of the Peruvian National Police, whether on active duty or suspended for disciplinary reasons, who commits punishable acts classified as ordinary offences shall be liable to twice the penalty laid down by the Penal Code or special legislation.
>
> "Retired members of the Peruvian National Police who commit punishable acts classified as ordinary offences shall incur the maximum penalty increased by 50 per cent".

Appendix

THEMATIC ANALYSIS OF TORTURE

I. CASES OF ALLEGED ILL-TREATMENT AND TORTURE BY PERSONNEL OF THE PERUVIAN NATIONAL POLICE (PNP)

A. Case: Salomé Adauto, Juan Arnaldo

1. Information received through the Special Rapporteur

"... was arrested in Huancayo, Junín, on 24 April 1991 by members of the police and taken to the 9 de diciembre police station, where he remained until his release on 10 June 1991. During his detention he was reportedly severely beaten, suffocated, suspended in the air and deprived of food" (see doc. E/CN.4/1994/31, para. 437).

2. Information provided by the National Police (PNP)

In memorandum No. 38-94-EMG-DIPANDH of 18 January 1994 the Director for National Pacification and the Protection of Human Rights of the General Staff of the National Police provided the following information:

> As regards the alleged disappearance of Juan Arnoldo Salomé Adauto, VIII-RPNP (responsible for policing in Junín) has reported that he was neither questioned nor detained by PNP personnel from this police district, as is confirmed by report No. 013-VIII-RPNP-EMR-ORPDH of 9 September 1992, annexed hereto (Annex B, No. 1).

B. Case: Salas Córdova, Antártico Daniel

1. Information received though the Special Rapporteur

"... was arrested in the district of San Martín, Lima, on 27 April 1992 by members of the National Police. He was taken to a police station, where he died a few hours later." Although the police asserted that he died from a heart attack, the autopsy report certified that his death was attributable to suffocation as a result of physical violence. In addition, it mentioned bruising on his face, scalp and upper and lower limbs (see doc. E/CN.4/1994/31, para. 440).

2. Information provided by the National Police

In respect of this case, the Inspector-General of the National Police transmitted memorandum No. 165-94-IGPNP-C of 18 January 1994, to the Director-General of the National Police, providing him with the following information in report No. 002-94-IGPNP-SG-UAI (Annex B, No. 2):

> On 22 September 1992, by memorandum No. 4887-92-IGPNP-C of 21 September 1992, report No. 179-92-IGPNP-01-E7 of 14 September 1992 was sent to the Directorate-General of the National Police, with details of the administrative disciplinary investigations undertaken to determine the responsibility of the author of statement No. 180-IC-H-DDCV of

12 May 1992, in connection with the death of the detainee Antártico Daniel Salas Córdova on 27 April 1992 at San Martín de Porres police station.

Further to this, on 20 December 1993, police report No. 405-93-DI-E5 of 18 November 1993 was sent by memorandum No. 4400-93-IGPNP-C, with the results of the investigations to determine the possible responsibility of National Police Capitain Estevan Castillo Farfan (deceased) in the death of the detainee Antártico Daniel Salas Córdova on 27 April 1992.

By decree No. 1061-93-DGPNP-EMP-AS1 of 31 December 1993, the Directorate-General of the National Police submitted the findings of the Inspectorate-General to the Board of Investigation into Senior Officers, so that it could consider them and give a decision.

As can be seen, administrative disciplinary investigations are still under way within the National Police to determine clearly whether any police officers were responsible for this person's death.

C. Case: Huatay Ruiz, Martha

Complaint No.	:		
Place	:	District	: Yanamayo rehabilitation centre
		Province	: Puno
		Department	: Puno
		Region	: XII-RPNP
Date	:		
Victims	:	A female terrorist held at Yanamayo rehabilitation centre, Puno	
Alleged Perpetrators	:	PNP personnel	
Grounds	:	Alleged torture of the detainee Martha Huatay Ruiz.	

Background: A Labour member of the United Kingdom Parliament, Peter Kilfoyle, has written to the Peruvian Ministry of Foreign Affairs requesting information on the detainee Martha Huatay Ruiz following allegations that she has been tortured.

Investigations carried out: The letter from Peter Kilfoyle, the Labour Member of Parliament, was sent, by memorandum No. 039-93-IN-CNDDHH/SP of 8 February 1993 to the DIRGEN-PNP.

Report No. 147-93-EMG/DIPANDH of 18 June 1993 (Annex B, No. 3) was submitted by memorandum No. 161-93-EMG/DIPANDH of 21 June 1993. In point 3 the report stated that by memorandum No. 032-XII-RPNP/Sec of 7 June 1993 XII-RPNP had submitted report No. 041-XII-RPNP/DPY (Annex B, No. 4) drawn up

by the office of the Governor of the penal establishment in Yanamayo, stating that the duty physician, PNP Major Angel Cárdenas Alcazar, had given the terrorist detainee Martha Huatay Ruiz a medical examination on 8 May 1993; the ectoscopic examination proved negative, since "no recent lesions were detected", thereby excluding the possibility that the detainee had been or was being tortured.

Report No. 298-93-EMG/DIPANDH was transmitted by memorandum No. 585-93-EMG/DIPANDH of 30 November 1993, drawing attention in point 7 to the fact that report No. 147-93-EMG/DIPANDH of 18 June 1993, had already been transmitted.

Reply to the Ministry of Foreign Affairs

Copies of report No. 147-93-EMG/DIPANDH of 18 June 1993 and report No. 041-XII-RPNP/DPY drawn up by the office of the Governor of the Yanamayo prison were transmitted by memorandum No. 272-93-IN-CNDDHH/SP of 25 June 1993.

D. Arrest of peasants in San Ignacio Cajamarca province

1. List of persons arrested

Vásquez Vásquez, Wigberto

Alvarado Campos, Plácido

Morales Labán, Víctor

Velásquez Flores, Crisanto

Granda Rodríguez, Guillermo

Oyola Cornejo, Guillermo

García Huamán, Javier

García Huamán, Benjamín

Cruz Bautista, Daniel

Huamán Huamán, Samuel

2. Information received through the Special Rapporteur

"Wigberto Vásquez Vásquez, 31, a teacher and President of the Committee for the Defence of the Interests of the People of San Ignacio; Plácido Alvarado Campos, 58, President of the Provincial Federation of Rural and Urban Brigades; Víctor Morales Labán, 40, President of the United Federation of Peasants and Brigades of San Ignacio (FUCASI); Crisanto Velásquez Flores, 40, Director of FUCASI; Guillermo Granda Rodríguez, 32, President of the Committee of Agrarian Producers of San Ignacio; Guillermo Oyola Cornejo, 48, secretary of the Provincial Federation of Rural and Urban Brigades of San Ignacio; Javier García Huamán, 34, peasant;

Benjamín García Huamán, 33, peasant; Daniel Cruz Bautista, 34, peasant; and Samuel Huamán Huamán, 53, peasant. According to the information received, these 10 members of the Committee for the Defence of the Forests of San Ignacio, province of San Ignacio, department of Cajamarca, were arrested on 27 June 1992 by members of the police and subjected to such forms of torture as beatings, suspension or immersion of the head in water."

Pursuant to an application for habeas corpus filed by their relatives, Judge Emiliano Pérez Acuña attempted to visit the detainees together with two doctors. However, the police denied them access to the place of detention.

3. Information provided by the National Police

By memorandum No. 585-93-EMG/DIPANDH of 30 November 1993, the Director of National Pacification and the Protection of Human Rights of the General Staff of the Peruvian National Police submitted report No. 298-93-EMG/DIPANDH, dated 30 November 1993, which states as follows:

> "8. With regard to the 'San Ignacio' incident, which took place on 27 June 1992 in Cajamarca, this department has submitted report No. 36-93-EMG/DIPANDH (Annex B, No. 5), which concludes that during the process of investigation PNP Major César Coquis Coz used neither violence nor his firearm against the detainees or against Dr. Emiliano Pérez Acuña, the examining magistrate, and that the rule of law and observance of human rights were ensured by the presence of the representative of the Office of the Public Prosecutor."

In connection with this case, the Inspector-General of the PNP has sent to the Director-General of the PNP, by memorandum No. 165-94-IGPNP-C of 18 January 1994, report No. 002-94-IGPNP-SG-UAI (Annex B, No. 6), with the following information:

> On 29 April 1993, by memorandum No. 1977-93-IGPNP-C, dated 29 April 1993, report No. 114-IGPNP-DI-E2 of 28 April 1993 was transmitted to DIRGEN-PNP, setting out the results of the administrative disciplinary investigations into alleged irregularities connected with the detention of individuals during police investigations into the attack on 26 June 1992 on the INCAFOR SA camp in the province of San Ignacio Cajamarca.

4. Additional information relating to the San Ignacio Cajamarca case from the data bank of the National Commission for Human Rights of the Ministry of the Interior

Complaint No. :

Place : District : San Ignacio

Province : San Ignacio

Department : Cajamarca

Region : II-RPNP

Date : 27 June 1992

Victims : Persons detained in Picsi-Chiclavo prison

Vásquez Vásquez, Wigberto

Velásquez Flores, Crisanto

Alvarado Campos, Plácido

Morales Labán, Víctor

Granda Rodríguez, Guillermo

Oyola Cornejo, Guillermo

García Huamán, Javier

García Huamán, Benjamín

Cruz Bautista, Daniel

Huamán Huamán, Samuel

Under warrant of arrest

Bure Camacho, Manuel

Calderón Bartolini, Olga

Olava Monteza, Juana

Delgado Montenegro, Félix

Alleged perpetrators : Criminal complaint for abuse of authority and arbitrary detention against the following:

Dr. Macartur Suxe Hernández, Provincial Procurator of San Ignacio;

Dr. José Rivadeneyra Efio, Deputy Procurator of Jaén;

Personnel of the National Police from the provincial headquarters of San Ignacio-Cajamarca;

PNP Major César Augusto Coquis Coz;

PNP Constable Luis Alberto Terry Díaz;

Grounds: Alleged arbitrary detention of the individuals referred to above; complaint lodged by the Coordinator-General of the Asociación Pro Derechos Humanos (APRODEH) with the Office of the Attorney-General.

Background: By memorandum No. 2515-92MP-FN of 14 August 1992, addressed to the Minister of the Interior, the Attorney-General of the Nation notified the complaint lodged by the Coordinator-General of Asociación Pro Derechos Humanos on behalf of the victims, enclosing a copy of the complaint and other documents and requesting reports on the matter.

A letter from Americas Watch dated 10 December 1992 was sent by fax to the President of the Republic expressing the organization's concern about the situation of the persons in question.

A copy of memorandum No. 043-CTE-93 from the Ecuadorian Workers' Confederation, reporting the detention of 10 leaders of the Committee for the Defence of the Forests of San Ignacio was transmitted to the Minister of the Interior by memorandum No. 364-93-MP-FN of 11 February 1993 from the Office of the Attorney-General of the Nation.

Investigations carried out: a photocopy of memorandum No. 2515-92-MP-FN and of the complaint filed by the Coordinator-General of APRODEH on behalf of the victims was sent to DIRGEN by memorandum No. 070-92-IN-CN-DDHH/SP of 27 August 1992.

A copy of the letter from Americas Watch transmitted by fax on 10 December 1992 was sent by SP to DIRGEN-PNP by memorandum No. 005-93-IN-CNDDHH/SP of 6 January 1993.

A copy of memorandum No. 364-93-MP-FN together with memorandum No. 043-OCT-93 was sent to DIRGEN-PNP by memorandum No. 069-93-IN-CN-DDHH/SP of 18 February 1993.

By memorandum No. 46-93-DGPNP/EMG-DIPANDH of 11 March 1993, a reply was sent by DIPANDH to memorandum No. 070-92-IN-CN-DDHH/SP, of 27 August 1992, transmitting report No. 36-93-DGPNP/EMG-DIPANDH of 1 March 1993 together with report No. 05-SR-PNPL-S3 of 2 October 1993, (Annex B, No. 7), with the following conclusions:

That Vásquez Vásquez, Wigberto; Velásquez Flores, Crisanto; Alvarado Campos, Plácido; Morales Labán, Víctor; Granda Rodríguez, Guillermo; Oyola Cornejo, Guillermo; and García Huamán, Javier, were arrested by the National Police on the grounds that they were involved in a presumed act of terrorism (an attack on the firm INCAFOR S.A.); the examining magistrate and provincial procurator of San Ignacio were informed of their arrest and incommunicado detention. Consequently, the complaint lodged by the representative of the Asociación Pro Derechos Humanos is legally unfounded, as it is based on information provided by Dr. Emiliano Pérez Acuña, former examining magistrate of San Ignacio (removed from office by the Supreme Court of Peru), against whom Major César Coquis Coz of the National Police has filed criminal charges for the offences of terrorism and perversion of the course of justice, lodged by II-RPNP with the Supreme Court of Peru.

Report No. 298-93-EMG/DIPANDH, enclosing a copy of report No. 36-93-DGPNP/EMG-DIPANDH of 1 March 1993, was transmitted by memorandum No. 585-93-EMG/DIPANDH of 30 November 1993.

B. Further information relating to the Chilcahuayco and Vilcashuamán cases from the data bank of the National Commission for Human Rights of the Ministry of the Interior

1. Information received through the Special Rapporteur

"In territories under a state of emergency, on the other hand, rape was perpetrated within the framework of the armed conflict, in rural areas, without prior detention and seemed to be used as a form of intimidation or punishment against civilian groups suspected of collaboration with insurgent groups. Incidents of this type were reported to have occurred, for example, at Chilcahuayco and Vilcashuamán, Ayacucho, in September 1990 and at San Pedro de Cachi, Ayacucho, in July 1991" (see doc. E/CN.4/1994/31, para. 432).

2. Information provided by the National Police

Chilcahuayco case

On 23 September 1991, PNP-PT Commander Elmo Vigo Bergente, of the PNP-PT Departmental Headquarters in Ayacucho, sent by fax information note No. 317-DEOOTE-JDP.PT.A dated 18 October 1990, and report No. 358-DEOOTE-JDP-PT-A, dated 21 March 1991. The documents contained, inter alia, the following information:

That on 18 October 1990, at Chilcahuayco, in San Pedro de Cachi district, Huamanga province, two mass graves were discovered, one of which was empty while the other contained 27 corpses; the discovery was made by members of the PNP-PT, an examining magistrate and the provincial prosecutor. Jhonny José Zapata Arruna, alias "Centurión" a sergeant in the Peruvian army was accused of the murders.

The victims were:

Florentino Wamánta (21)

Marcelino Córdova Rodríguez (17)

Augusto Palomino Calle (25)

María Palomino Calle (14)

Juanito Orumo Saune (14)

Victoria Espinoza Orumo (30)

Sonia Santiago Ilaccahuamán (14)

Bernardino Wolgar Quispe (15)

Emilio Lobatón Palomino (61)

Demetrio Punto Tello (51)

Evaristo Juamancusi Córdova (45)

Dina Albujar Llactahuamán (13)

Julia Mendoza Gómez (20)

Gabriel Palomino Huayhua (26)

Delia Melgar Quispe

Irene Melgar Quispe

No. 3 court of investigation in Huamanga-Ayacucho initiated investigatory proceedings under file No. 07-91 against Jhonny José Zapata Acuna for offences against life, physical integrity and health (aggravated homicide) and against property (theft).

Vilcashuamán case:

The Chief of the General Staff of the Peruvian National Police transmitted to the Vice-Minister of the Interior, by memorandum No. 093-3-DGPNP/EMG-DIPANDH of 20 April 1993, report No. 64-93-DGPNP/EMG-DIPANDH concerning the alleged violation of the human rights of Bernabé Baldeón García, Jesús Baldeón Zapata and Santos Baldeón Palacios.

On this matter, the headquarters of the IX-SRPNP-Ayacucho drew up report No. 178-JECOTE-CNPN-WRLA of 29 September 1992 (Annex B, No. 8), which concluded that after investigation it had been determined that the persons referred to above were neither taken in for questioning nor arrested by PNP personnel, but were taken in by a patrol of the Peruvian army from Accomarca Base on 25 September 1991.

The Secretary-General of the Ministry of Defence sent the Vice-Minister of the Interior information on this case by memorandum No. 1408-SGMD-M of 16 March 1993, together with a reference sheet (Annex B, No. 9). The following extracts from this document are particularly noteworthy:

"Circumstances. (a) An army unit from Accomarca allegedly entered the village of Vilcashuamán, where it is reported to have detained a number of the inhabitants, among whom were Bernabé Baldeón García, Santos Baldeón Palacios and Jesús Baldeón Zapata. (b) It is reported that all of these persons were tortured and that Bernabé Baldeón García died as a result."

"Investigations carried out. (a) The investigations have determined that between 23 and 27 September 1990 No. 34 BCS carried out operation 'Pompeyo' involving military personnel from Accomarca BCS. In the course of the operation some 30 persons were arrested in the village of Paccha Huallhua and later released for lack of evidence that they were involved in subversive activities. During this operation one of the villagers named Barnabé Baldeón García died; according to the medical report his death was caused by a heart attack.

(b) Santos Baldeón Palacios and Jesús Baldeón Zapata, who were arrested together with Bernabé Baldeón García were released in perfect health and were in no way ill-treated. (c) There is no documentary evidence to support the allegation by these individuals that they were tortured. Consequently, the investigations carried out have clearly determined that no members of the army were involved in the reported crimes ...".

II. INDIVIDUAL CASES OF RAPE COMMITTED BY MEMBERS OF THE NATIONAL POLICE (PNP)

A. Case: Coqchi Calle, Pilar

1. Information received through the Special Rapporteur

"... this nursing student was arrested on 23 January 1990 in Huamanga, Ayacucho, on accusation of activities connected with the Sendero Luminoso in the district of Belén. While in detention she was allegedly raped several times and was subjected to other forms of torture such as beating, suffocation and hanging. Although she submitted a complaint to the government procurator, no charges were filed against any members of the police, for lack of evidence" (see doc. E/CN.4/1994/31, para. 433 (a)).

2. Information provided by the National Police

In memorandum No. 38-94-EMG-DIPANDH of 18 January 1994, the Director for National Pacification and Defence of Human Rights of the General Staff of the Peruvian National Police gave the following information:

> "With reference to the arrest of Pilar Coqchi Calle, alias Marlene, IX-RPNP states that this person is held at Huamancaca prison, Huancayo, serving a sentence for the crime of terrorism. She is accused of being a political leader of the PCP-SL Area Committee of Huamanga-Ayacucho, according to report No. 003-IX-RPNP-RND of 6 December 1993 (Annex B, No. 10).

B. Case: Loayza Tamayo, María Elena

1. Information received through the Special Rapporteur

"... 38 years old, professor at the University of San Martín de Porres, was arrested on 6 February 1993 in Lima by members of the National Directorate against Terrorism (DINCOTE) on suspicion of maintaining links with members of the Sendero Luminoso. She was kept incommunicado from 6 to 15 February, during which time she was reportedly tortured in order to obtain her confession by being beaten and kicked, mainly in the head and thorax, submerged in water to simulate drowning and raped several times. The report of the forensic physician on a medical examination made around 15 February did not mention signs of torture. However, another woman detained at the same time in the premises of DINCOTE, María de la Cruz Pari, was also allegedly raped and is now pregnant" (see doc. E/CN.4/1994/31, para. 433 (d)).

2. Information provided by the National Police

By memorandum No. 10361-DINCOTE-Sc of 8 November 1993, the Director of DINCOTE of the Peruvian National Police, transmitted to the National Human Rights Commission of the Ministry of the Interior report No. 4390-DIVICOTE-3-DINCOTE of 4 November 1993, which states the following:

> "II. Action required. A. In accordance with report No. 2630-DIVICOTE-3-DINCOTE, concerning the detention of the terrorist María Elena Loayza Tamayo, following an exhaustive police investigation it was established that along with other terrorists she had committed the crime of treason (DL.25659). Additional statement of evidence No. 049-DIVICOTE-3-DINCOTE was drawn up on 25 February 1993 and submitted to the competent legal authority; no human rights violations were committed when the investigation was carried out in the presence of the representative of the Office of the Public Prosecutor, with the formalities and guarantees established by law."

A statement by María Elena Loayza Tamayo (Annex B, No. 11), taken on 15 February 1993, was attached to report No. 2630-DIVICOTE-3-DINCOTE, with her replies to a 33-question interrogation, from which it may be seen that in none of her replies does she mention having been the victim of any kind of torture, still less of rape. For greater credibility, the statement was made in the presence of her defence counsel, Dr. Carolina M. Loayza Tamayo (the detainee's sister), identified by card No. 9219 from the College of Lawyers of Lima, and of the Special Military Procurator, identified by code No. 1000-2700; along with the detainee and the investigator, they signed the document in question. It may be mentioned that in question No. 33 the detainee was asked "if you have anything further to add to your statement. She said ...". At no time during her reply did she say that she had been subjected to any act of rape or violation of her rights, as may be seen from a perusal of the document.

The same police document (report No. 2630-DIVICOTE-3-DINCOTE), also states the following, in section II "Action required. G. Taking into consideration the circumstances and the complex nature of the investigations in respect of the detention of María Elena Loayza Tamayo, alias 'Rita', and other PCP-SL terrorists, it was decided to keep the detainees incommunicado for the maximum length of time permitted by law (10 days), with the knowledge of the Office of the Public Prosecutor and the examining magistrate respectively, in accordance with Decree-Law 25475, article 12 (d), of 6 May 1992" (annex B, No. 12).

From the above it may be concluded that the detainee Loayza Tamayo was kept incommunicado with legal authority and with the knowledge of the competent authorities, in accordance with the above-mentioned Decree-Law.

3. Additional information on the case of María Elena Loayza Tamayo from the data bank of the National Human Rights Commission of the Ministry of the Interior

Complaint No. : 11,154 CIDH

Place : District : Los Olivos

Province : Lima

Department : Lima

Region : VII-RPNP

Date : 6 February 1993

Injured party : María Elena Loayza Tamayo, university professor at the Private University of San Martín de Porras

Alleged perpetrators : DINCOTE personnel

Motive: The injured party states that during her detention from 6 to 27 February 1993 at DINCOTE, she underwent torture (immersion in the sea in a jute sack) and was subjected to sexual acts by members of the police. This could not be confirmed, since the forensic medical examination was carried out prior to 15 February 1993 and not attended by her counsel, which means that no record of the acts to which she was subjected appears in the medical certificate.

Background: Fax No. 158-DGAES-DDHH of 2 June 1993, transmitting a communication by the CIDH concerning the alleged violation of the human rights of the complainant.

Fax No. 175-DGAES-DDHH of 30 June 1993 from the Ministry of Foreign Affairs transmitting additional information concerning the alleged violation of the human rights of the complainant.

Unnumbered letter from the College of Lawyers of Lima, signed by the Dean, Mr. Jorge Avendaño V., to the effect that, with reference to report No. 2630-DIVICOTE-DINCOTE of 30 June 1993, signed by PNP Colonel José Espinoza Fernandez and submitted by the Peruvian Government to the CIDH, Dr. Carolina Loayza Tamayo states that the terms used in paragraph (h) of the report violate her constitutional rights and the laws of the Republic and therefore requests that investigatory proceedings should be initiated against the above-mentioned PNP Colonel and Captain José Espinoza Fernandez.

Measures taken: Memorandum No. 255-93-IN-CNDDHH/SP of 10 June 1993 transmitting to the Director-General of the Peruvian National Police a copy of fax No. 158-DGAES-DDHH.

Memorandum No. 281-93-IN-CNDDHH/SP of 7 July 1993 transmitting to the Director-General a copy of fax No. 175-DGAES-DDHH.

Memorandum No. 210-93-DGPNP/EMG-DIPANDH of 14 July 1993, transmitting report No. 176-93-EMG-DIPANDH of 13 July 1993, paragraph 2 of which states that from report No. 2630-DIVICOTE of 30 June 1993 it emerges that on 6 February 1993 DINCOTE personnel took María Elena Loayza Tamayo for questioning from her home in calle Mitobamba Mz. D-3. L-18 Urb. Los Naranjos, Distrito de los Olivos, Lima, since the building was known to house many terrorists clandestinely, as was confirmed by statements by captured terrorists such as Vilma Cuevas Antaurco alias Mónica, Nataly Salas Morales, alias Cristina, and Angélica Torres Garcia, alias Malena or Mirtha. Given these circumstances and the fact that her direct participation in numerous terrorist attacks and raids had been established, proceedings were initiated against her in statement of evidence No. 049-DIVICOTE-DINCOTE of 25 February 1993; she was charged before the Special Standing Naval Court, which sentenced her to 30 years' imprisonment.

Memorandum No. 466-93-IN-CNDDHH/SP of 18 October 1993 transmits to the Director-General of the PNP a copy of an unnumbered letter of 22 September 1993 from the College of Lawyers of Lima, containing a protest by Dr. Carolina Loayza Tamayo against the terms used in paragraph (h) of report No. 2630-DIVICOTE-DINCOTE of 30 June 1993.

Memorandum No. 10361-DINCOTE-Sc of 8 November 1993 transmits report No. 4390-DIVICOTE-3-DINCOTE of 4 November 1993 with the conclusion that where paragraph (h) of report No. 2630-DIVICOTE-DINCOTE of 30 June 1993 is concerned, no reference was made to Dr. Carolina Loayza Tamayo, nor was it asserted that she belonged to the Association of Democratic Lawyers, nor was the right of defence enshrined in the Constitution restricted nor any attempt made to restrict it.

Reply to the Ministry of Foreign Affairs: memorandum No. 307-93-IN-CNDDHH/SP of 16 July 1993 transmits to the Ministry of Foreign Affairs a copy of report No. 176-93-EMG-DIPANDH of 13 July 1993 and report No. 2630-DIVICOTE-3-DINCOTE of 30 June 1993.

C. Case: De la Cruz Pari, María

1. Information received through the Special Rapporteur

"However, another woman who was detained at the same time (detention of María Elena Loayza Tamayo) at the DINCOTE premises, María de la Cruz Pari, was allegedly also raped and is now pregnant."

2. Information provided by the National Police

In memorandum No. 129-93-DGPNP-CEOPOL of 28 October 1993 (Annex B, No. 13), the Director-General of the Peruvian National Police stated the following:

With reference to the alleged rape of María de la Cruz Pari by members of PNP-DINCOTE, the PNP General Inspectorate, in report No. 268-93-IGPNP-DIE1, States that when she was arrested on 6 January 1993 she was approximately one month and two weeks pregnant, according to forensic examination No. 28149-HCL of 19 July 1993 and echographic diagnosis No. 3243 by the IPSS

(Guillermo Almenara Irigoyen Hospital) of 12 August 1993; it is impossible that she was raped, since she did not complain of being subjected to any such experience during the investigation process of 6 to 26 January 1993, when she received visits from members of the International Committee of the Peruvian Red Cross, the duty provincial procurator, the military procurator, her defence counsel and relatives, including her mother, Julia Pari Taype, with whom she had two personal interviews, and also because of forensic examination No. 1233-L of 11 January 1993, made three days after the alleged rape and physical ill-treatment; in addition to the interview which the forensic physician had with her, the result of the expert report states that there were no vaginal irritations, bruises, abrasions and/or erythema between the legs, thighs, ankles, wrists, feet and hands, which, given the violence with which she was allegedly held down by various members of the police to facilitate commission of the act by one of them, should have existed and been easy to see; lastly, it is neither logical nor consistent that she should have submitted her complaint to COFADER on 30 April 1993, 3 months and 24 days after being arrested.

III. CASES OF ALLEGED ILL-TREATMENT AND TORTURE BY MEMBERS OF THE PERUVIAN ARMED FORCES

A. Case: Quispe Pérez, Higinio

1. Information received through the Special Rapporteur

It is reported that on 12 April 1991, Higinio Quispe Pérez and Eleuterio Inga were arrested by soldiers and taken to the military base at Chaquicocha, where they were allegedly beaten; next day they were transferred to the Chupaca base in the district of the same name in the Province of Huancayo, Department of Junín, where together with Héctor Méndez Córdoba, they were reported to have been severely beaten, with hoods over their heads and their hands tied behind their backs (see doc. E/CN.4/1994/31, para. 434).

2. Information provided by the Ministry of Defence

The allegations have been shown to be inaccurate by the alleged injured parties themselves.

There is no evident or official fact relating to the complaint which can be taken into account in assessing it.

An investigation was ordered by the Command of the Central National Security Sub-Zone with headquarters in Huancayo to verify the truth of the complaint and initiate proceedings against and/or punish those responsible as the case might be.

As a result of the investigations the alleged injured parties were located. They declared in the presence of Mrs. Ana María Palomino Martín of the Legal Sector of the Archbishopric of Huancayo that on the date in question they were captured by two hooded men, taken elsewhere, beaten and released the following day; they did not say that they were military personnel and have not brought any complaints against members of the Peruvian army.

E. Case: Enriquez Vargas, Senobio

1. Information received through the Special Rapporteur

It is reported that Senobio Enriquez Vargas was arrested on 24 January 1992 at Manta, Huancavelica, by members of the army and was reported to have been beaten and cut in the arm and chest (see doc. E/CN.4/1994/31, para. 436).

2. Information provided by the Ministry of Defence

It has still not been possible to prove whether or not the facts reported are true.

There are no collateral or evident facts which could be used to assess the complaint.

The Command of the National Security Sub-Zone in question has been ordered to carry out an immediate investigation so as to enable the validity of the complaint to be determined as soon as possible; this will enable those responsible to be identified and steps to be taken to impose punishments and/or bring criminal charges in accordance with the law.

C. Case: Salomé Adauto, Juan Arnaldo

1. Information received through the Special Rapporteur

Mr. Juan Arnaldo Salomé Aduato is reported to have been arrested in the city of Huancayo, Department of Junín, on 24 April 1991 by members of the police and taken to the "9 de diciembre" military barracks in Huancayo; he remained there until 10 June 1991, when he was released after having been beaten, suffocated, suspended in the air and deprived of food (see doc. E/CN.4/1994/31, para. 437).

2. Information provided by the Ministry of Defence

The facts reported have not been confirmed by the complainant.

It is important to note that the alleged injured party made use of various press media in order to publicize his complaint.

The Office of the Public Prosecutor has taken part in the investigations. In view of the publicity given the case, the Frente Mantaro Command, which has its headquarters in the City of Huancayo, initiated an investigation, which determined that the facts reported were not in accordance with the truth and issued an official communiqué denying the report.

Mr. Salomé Adauto was examined by the Office of Forensic Medicine in Huancayo (medical certificate No. 273-91); the results can be found in the file in the Office of the Public Prosecutor.

No responsibility has been established, since the truth of the complaint has not been determined.

The pre-trial investigation is in the hands of the Office of the Public Prosecutor; the administrative disciplinary investigation concluded that the events reported had not taken place.

D. Case: Flores Rojas, José Natividad

1. Information received through the Special Rapporteur

It is reported that Mr. José Natividad Flores Rojas was arrested on 23 July 1992 by members of the army in Bagua, Department of Amazonas, and taken to the military barracks of the Fifth Forest Infantry Division, where he remained for 13 days and was allegedly beaten, subjected to electric shocks and suspended for long periods (see doc. E/CN.4/1994/31, para. 438).

2. Information provided by the Ministry of Defence

It has been determined that the facts are not accurate.

It is important to point out that Mr. José Natividad Flores Rojas, according to the results of recent investigations, made contact with terrorists operating in the Bagua area, and this was why he was taken in by the forces of law and order. He had, moreover, been expelled from the Peasant Brigades at an earlier date.

The Office of the Public Prosecutor was involved in the capture of Mr. Flores Rojas, in strict compliance with the regulations in force and in order to guarantee his safety. The Office also carried out investigations into the form and circumstances of his detention, given the outstanding complaint of ill-treatment. The army command also carried out an investigation, which concluded that the complaint was untrue.

The forensic medical certificates (No. 315-H5RB-92) from the medical examinations of the complainant establish that he did not undergo any physical ill-treatment.

Since the truth of the facts cannot be proved, no responsibility can be attributed.

E. Case: Calipuy Valverde, Alberto, and Yauri Ramos, Rosenda

1. Information received through the Special Rapporteur

Both these persons were arrested by military personnel in May 1993 in the district of Anamarca, province of Santiago de Chuco, department of La Libertad; shortly after, they were found dead (see doc. E/CN.4/1994/31, para. 444).

2. Information provided by the Ministry of Defence

The events reported are borne out by the investigation carried out.

The press covered the facts extensively.

At the present time the Standing Military Court of the First Military Judicial Zone has initiated criminal proceedings against the persons responsible.

The Army Investigations Department undertook the relevant administrative investigation.

The victims were in fact killed in the circumstances described in the complaint.

Those responsible have been identified as Army Major José Gustavo Mayor Vásquez, Warrant Officer (Second Class) Nilde Pajares Abanto, Sergeant (Second Class) Eduardo Rodríguez Madero, and Private Julio Alcántara Moreno of the Thirty-second Infantry Division.

The Army Investigations Department in charge of the administrative investigation decided that criminal charges should be brought against those responsible and placed the matter before the Investigation Council.

The Investigation Council decided as a disciplinary measure to retire Major José Gustavo Mayor Vásquez and Warrant Officer (Second Class) Nilde Pajares Abanto.

The Standing Military Court of the First Military Judicial Zone initiated proceedings against the persons responsible for these events, charging them with crimes against life, physical integrity and health and against property.

The criminal proceedings are in progress, and both Major José Gustavo Mayor Vásquez, and Warrant Officer (Second Class) Nilde Pajares Abanto are detained by order of the Military Court of Trujillo in charge of the investigation.

According to military criminal regulations, the compensation due will be established in the sentence.

F. Case: Gonzales Tuanama, Marcos

1. Information received through the Special Rapporteur

It is reported that Marcos Gonzales Tuanama was arrested on 29 April 1992 by a military patrol of the Mariscal Cáceres Base, Department of San Martín, and that during interrogation he was beaten and subjected to electric shocks (see doc. E/CN.4/1994/31, para. 446).

2. Information provided by the Ministry of Defence

It has not been possible to determine whether the events reported are true.

Mr. Marcos Gonzales Tuanama was placed at the disposition of the National Police on 15 May 1992 on allegations of being a terrorist and not possessing documents.

The investigation of the complaint of ill-treatment was submitted to the Office of the Public Prosecutor, but was not formalized, and when the above-mentioned person was summoned to give evidence he did not appear, so that the matter is still pending.

G. Case: Zárate Rotta, Marco, Aguilar del Alcazar, Enrique, and Cáceres Haro, César

1. Information received through the Special Rapporteur

It is alleged that Lieutenant-Colonels Marco Antonio Zárate Rotta and Enrique Aguilar del Alcazar, Major César Cáceres Haro and Major (r) Salvador Carmona Bernasconi, arrested following their involvement in an attempted coup d'état in November 1992, were subjected to torture during their detention, such as beating, electric shocks and being suspended (see doc. E/CN.4/1994/31, para. 443).

2. Information provided by the Ministry of Defence

It has been proved that the allegations were untrue.

It should be borne in mind that these complaints were widely publicized, even giving rise to presidential intervention, as a result of which they were disproved in detail.

The Office of the Public Prosecutor was the first to intervene through the thirty-fourth Provincial Criminal Procurator's Office of Lima, which decided on 18 December 1992 that there were no grounds for bringing a criminal charge against persons responsible for offences against freedom or crimes against life, physical integrity and health; the case was filed. A complaint against this decision was made before the Tenth Higher Criminal Procurator's Office of Lima, which confirmed all the details of the decision.

The military legal authorities then requested an intervention by the experts of the Criminology Division, who gave forensic expert opinions (ectoscopic examinations), together with certificates from the Institute of Forensic Medicine, specifying that all the persons concerned were clinically in good health and showed no trace of ill-treatment and/or physical torture requiring medical attention or involving incapacity to work.

These facts resulted in the issue by the Supreme Court of Military Justice of communiqué 006-92 of 18 December 1992. Having taken over the case, the Court confirmed that no physical abuse had taken place.

The medical examinations gave no results corroborating the report; on the contrary, they gave the lie to the entire complaint.